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No. 427

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

ALFRED C. FULLER

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 63-71) is unreported. The per curiam opinion of the Circuit Court of Appeals (R. 84) is reported in 105 Fed. 2d 903.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 19, 1939 (R. 85). The petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question which the petitioner seeks to present if the petition is granted is whether the income from a voluntary irrevocable trust created by the respondent Fuller, pursuant to agreement looking to a divorce by his wife, which she later obtained, is taxable to him although he received none of the income from the trust and had no participation whatsoever, either present or prospective, in either the income or principal thereof, and although the income from the trust was not used to satisfy any legal obligation, contractual or otherwise, of his to support, maintain or pay money to his divorced wife in any of the taxable years in question.

STATEMENT

The facts as stipulated (R. 30-50) and found by the Board of Tax Appeals (R. 63-67) are summarized in the petition for *certiorari*.

OUTLINE OF ARGUMENT

I. The Circuit Court of Appeals for the Second Circuit has determined that the establishment by the respondent of the trust fund was the

equivalent of a lump sum settlement and review of this determination is not sought in this petition.

II. The granting of *certiorari* in the *Fitch* case does not necessitate the granting of the petition in the case at bar.

III. There is no conflict in the decisions of the Circuit Courts of Appeal which necessitates the establishment by this Court of a controlling principle.

IV. The function of this Court is to establish basic principles of law; not to apply those principles to endless variations of fact situations.

V. This Court, having granted *certiorari* in *Helvering v. Fitch*, has the opportunity to clarify the basic principles if it deems necessary, and therefore should not put this respondent to the burden of litigating his controversy further.

ARGUMENT

First Point

The Circuit Court of Appeals for the Second Circuit has determined that the establishment by the respondent of the trust fund was the equivalent of a lump sum settlement and review of this determination is not sought in this petition.

The trust agreement establishing the trust, the income from which the petitioner claims is taxable to the respondent, constituted an absolute, final and complete financial settle-

ment as between the respondent and his divorced wife. Mrs. Fuller released the respondent from all rights of support and maintenance in consideration of the transfer by him to a trustee of certain securities, the income from which was to be paid to her for ten years, and thereafter, commencing November 12, 1940, (R. p. 48) she was to become the legal as well as the equitable owner of the trust corpus. The respondent performed his entire duty, fulfilled his entire obligation to his former wife when he established the trust fund. Mrs. Fuller voluntarily exchanged her rights against Fuller for rights against the trustee and the trust fund. There is no more reason for taxing this respondent on his wife's income from that trust than there would be to tax him on her income from property he had under similar circumstances transferred to her outright as a lump sum settlement in complete discharge of the obligation of support. The Circuit Court of Appeals for the Second Circuit has determined that the establishment of the trust was the equivalent of a lump sum settlement and the petitioner does not seek to review this determination. To tax the respondent on the income his former wife receives from this trust fund would violate the principle established in *Hoeper v. Tax Commission*, (1931) 284 U. S. 206, for it is a fundamental proposition that to measure the income for tax purposes of one person by that of another is a taking of property without due process of law.

Second Point

The granting of *certiorari* in the *Fitch* case does not necessitate the granting of the petition in the case at bar.

This Court on October 9th granted *certiorari* in *Helvering v. Fitch*, No. 243. A petition for *certiorari* has also been

filed in *Helvering v. Leonard*, No. 426. If trust income received by the divorced wife of the settlor is applied in discharge of a continuing obligation of the settlor to support or pay money to her, the income is taxable to him under the rule of *Douglas v. Willcutts*, 296 U. S. 1. If no obligation on the part of the taxpayer to his former wife exists during the tax year, the income should be taxable to the beneficiary of the trust who receives and enjoys the income. *Commissioner v. Tuttle*, 89 Fed. 2d 112. In the *Fitch* and *Leonard* cases the petitioner contends that the Circuit Courts erred in interpreting the local law as to the conclusiveness of the divorce decrees in those cases, and that Fitch and Leonard are under a continuing obligation because the Courts which granted the divorces retained jurisdiction to compel further contribution to the support of their former wives. Although the soundness of this proposition is disputed, the petitioner in those cases claims support for his contention in the decisions of *Douglas v. Willcutts* and *Helvering v. Coxey*, 297 U. S. 694. (See Government briefs in *Helvering v. Coxey* and *Helvering v. Brooks* 82 Fed. 2d 173.) There is no corresponding question of state law involved in the *Fuller* case. The petitioner does not seek review of the Circuit Court's determination that the Nevada Court's jurisdiction over the respondent was at an end before the beginning of the tax years in question.

The petitioner may also contend in the *Fitch* and *Leonard* cases that the taxpayers impliedly agreed to see that their former wives received specified annual sums after divorce, that the trust income in those cases was applied in discharge of such a continuing obligation and may therefore be taxed to the respondents. *Douglas v. Willcutts*. No such claim is or can be made in the *Fuller* case. The Circuit Court has determined that "the trust was in full discharge of the husband's duty to support the wife". (105 Fed. 2d 903.) The

petitioner does not seek to review this determination. It is therefore apparent that the granting of *certiorari* in the *Fitch* case does not necessitate the granting of the petition in the case at bar.

Third Point

There is no conflict in the decisions of the Circuit Courts of Appeal which necessitates the establishment by this Court of a controlling principle.

The Circuit Courts of Appeal have been guided by the rule enunciated in *Douglas v. Willcutts*, namely, that income paid in discharge of an existing obligation is constructively received by the obligor and should be taxed to him, whether or not the payment is effected through the medium of a trust. It was not because the trusts were *created* in order to satisfy the husband's obligation to support and maintain his wife that the settlors were held taxable in *Douglas v. Willcutts* and similar cases*, but because by the terms of the settlements in each of that line of cases the husband assumed a contractual obligation to pay a specified annual sum to his former wife, and because the trusts were set up merely as security for the performance of that continuing obligation. At the present time the Circuit Courts of Appeal in three different circuits have decided that where there has been a final settlement discharging the husband's obligation to his wife, he is not taxable on the income from the trust which constituted the settlement. (*Commissioner v. Tuttle*, C. C. A. 6th, *supra*; *Fitch v. Commissioner*, C. C. A. 8th,

Commissioner v. Hyde, 82 Fed. 2d 174; *Alsop v. Commissioner*, 92 Fed. 2d 148, *cer. den.* 302 U. S. 767; *Glendinning v. Commissioner*, 97 Fed. 2d 71; *Donnelley v. Commissioner*, 101 Fed. 2d 879, *cer. den.* June 5, 1939, 83 L. Ed. 1032.

103 Fed. 2d 702, *cer. gran.* Oct. 9, 1939, No. 243; *Helvering v. Leonard*, C. C. A. 2d, 105 Fed. 2d 900; and *Fuller v. Helvering*, C. C. A. 2d, 105 Fed. 2d, 903.) These Courts have agreed that these cases do not fall within the rule of *Douglas v. Willcutts*, but they have not challenged the correctness of the *Douglas* case or of the cases that have followed it. Therefore there is no conflict at the present time in the different circuits necessitating the elucidation by this Court of a controlling rule or principle. That there is no conflict in the minds of the learned judges of the Circuit Court of Appeals for the Second Circuit is apparent from the fact that that Court decided the *Fuller* case in favor of the taxpayer but did not overrule the *Hyde* case, *supra*, which is on all fours with the *Douglas* case.

Fourth Point

The function of this Court is to establish basic principles of law; not to apply those principles to endless variations of fact situations.

The petition for the writ of *certiorari* in *Helvering v. Fitch*, No. 243, at pp. 14 and 15, points out that in the New York and Chicago offices of the Bureau and in the Income Tax Unit in Washington there are altogether seventy-nine cases pending where taxpayers presumably are resisting the effort to impose income taxes upon them in connection with income which they think they did not receive. Each one of these cases probably represents somewhat different facts, different trust agreements and different divorce decrees. It is the business of this Court to establish broad principles but not to concern itself with endless variations of specific facts and trust indentures, and procedural and statutory questions in the forty-eight different states relating to the effect of

divorce decrees. It is the function of the lower courts to apply the basic rules established by this Court to the manifold particular cases with varying details.

This Court has established the rule that one person should not pay a tax on the property of another (*Hoeper v. Tax Commission, supra.*) This Court has also established the rule that where property is set up in trust so that its profits serve to discharge the thereafter continuing obligation of the settlor he may be compelled to pay an income tax on the income therefrom, (*Douglas v. Willcutts; Old Colony Trust Co. v. Commissioner*; 279 U. S. 716) but this Court has impliedly stated that unless the income from such trust is applied in discharge of a then existing obligation, unless in other words some obligation from the settlor to the beneficiary exists in the tax year in question, the ordinary rules of the taxation of trusts apply. *Blair v. Commissioner*, 300 U. S. 5 at 11. The respondent respectfully contends that therefore this Court should not see fit to review each case and apply these basic rules to the varying fact situations in the seventy-nine cases already pending and in the multitude of additional cases which will inevitably arise.

Fifth Point

This Court, having granted *certiorari* in *Helvering v. Fitch*, has the opportunity to clarify the basic principles if it deems necessary, and therefore should not put this respondent to the burden of litigating his controversy further.

It is impossible for the respondent to determine whether this Court granted *certiorari* in *Helvering v. Fitch* in order to review the question of whether or not the taxpayer con-

tinued under obligation to his former wife in the tax year there involved or in order to clarify the basic principles of taxation of trust income. If the former, the respondent has pointed out under the Second Point, *supra*, that review of this question is not sought in the case at bar and that therefore the petition should be denied. If the latter, this Court has already assured to itself the opportunity of clarifying the applicable basic principles. It is therefore unnecessary for this Court to grant *certiorari* in the case at bar, and therefore the respondent should not be put to the burden of litigating his individual controversy further. Whenever reasonably possible, an early end to litigation is a basic principle of justice.

CONCLUSION

The respondent therefore respectfully prays that the petition for a writ of *certiorari* be denied.

Respectfully submitted,

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